

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUSTO GERMAN TOMAS-TEMA,

Defendant.

No. 1:12-CR-259

Hon. Paul L. Maloney
Chief United States District Judge

BRIEF IN SUPPORT OF GOVERNMENT'S
MOTION FOR DOWNWARD DEPARTURE

Pursuant to United States Sentencing Guidelines Section 5K3.1, the United States seeks a 4-level downward departure from Defendant Justo German Tomas-Tema's advisory guideline range. This motion is based upon the early disposition (fast-track) program authorized by the Attorney General of the United States and implemented in this Judicial District effective March 1, 2012.

Procedural History

On October 24, 2012, a federal grand jury returned a single-count indictment charging Defendant with being a felon who returned to the United States without permission after having been removed, in violation of Title 8, United States Code, Sections 1326(a) and (b)(1). Defendant entered a timely guilty plea to the charge on November 27, 2012.

The U.S. Probation Office has prepared a Presentence Investigation Report ("PSR"), to which there are no outstanding objections. The PSR calculates Defendant's total offense level at 10, with a criminal history category of V, resulting in an advisory guidelines range of 21-27

months. There is no applicable mandatory minimum sentence. Defendant's sentencing hearing is scheduled for March 18, 2013.

Relevant Sentencing Guidelines Provisions

Section 5K3.1 of the United States Sentencing Guidelines provides:

Upon motion of the Government, the court may depart downward not more than **4** levels pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the court resides.

In accordance with this policy statement, the United States Department of Justice directed on January 31, 2012, that all U.S. Attorney's Offices implement a fast-track policy by March 1, 2012 in order to provide the opportunity for uniform relief for all eligible defendants throughout the country. The Department of Justice policy established baseline eligibility requirements for defendants charged with felony illegal reentry offenses to qualify for such treatment. These requirements were incorporated into the policy effectuated in the District. (Attachment 1).

The United States has reviewed the presentence report prepared in this case and concluded that Justo German Tomas-Tema is a qualifying defendant as defined in the policy. It has conferred with counsel for the Defendant, who has discussed the matter with Mr. Tomas-Tema. A "Fast-Track Plea Agreement" has been signed and filed.

Accordingly, the United States recommends that Defendant Justo German Tomas-Tema receive a 4-level departure pursuant to USSG § 5K3.1. Should the Court grant this motion and approve a 4-level departure, Defendant's advisory range would be 9-15 months.

The ultimate determination of the appropriate sentence in this matter is, of course, a matter within the sole discretion of this Court.

Respectfully Submitted,

PATRICK A. MILES, JR.
United States Attorney

Dated: March 7, 2013

/s/Donald Daniels
DONALD DANIELS
Assistant United States Attorney
P.O. Box 208
Grand Rapids, MI 49501-0208
(616) 456-2404